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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,696	12/16/2001	Michael Brock	MULLER-27	6217

7590

06/25/2003

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EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,696

Applicant(s)

BROCK ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections 35 U.S.C. § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The general formula given in claim 1 for alkanolammonium alkylsulfate is confusing in that the ions have not been balanced (cation only). The claim is indefinite as to the compounds encompassed thereby.
4. claim 14 recites further comprising one surfactant and one electrolyte. Note ionic surfactant may be considered as electrolyte. It is unclear if one ionic surfactant would meet both limitations. The claim is indefinite as to if the electrolyte is an additional ingredient other than ionic surfactant.
5. Claim 15, depending from claim 14, recites (F) as one additive. However, claim 14 recites (F) as electrolyte.

Claim Rejections 35 U.S.C. 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerg et al. (US 6,132,738, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040).

8. Lerg et al. teaches a cosmetic cleansing composition for shower comprising fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt; an oil component, which may be triglycerides; a low alky alcohol, such as propylene glycol, and other well known cosmetic additives, including surfactant. See, particularly, the examples in columns 7 and 8. and the claims. Lerg et al. further teaches that it is considered within the skill of artisan to formulate various forms of oil containing composition, including oil-in-water emulsion, by using proper surfactant. See, particularly, column 1, lines 35-47.

9. Lerg et al. does not teach expressly a diluted form, i.e., with substantially amount of water, and in the form of microemulsion.

10. However, Balzer teaches that fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt, are known to be an emulsifier, particularly, in cosmetic or pharmaceutical composition containing oil components. Bergmann et al. teaches that fatty alcohol ether sulfate alkanolammonium salt are known to be useful in cosmetic microemulsion compositions as surfactant. See, particularly, column 18, lines 34-60.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to dilute the composition of Lerg et al. with water and formulate the composition into micremulsion form accordingly.

A person of ordinary skill in the art would have been motivated to dilute the composition of Lerg et al. with water and formulate the composition into micremulsion form because fatty alcohol ether sulfate alkanolammonium salts, or fatty alcohol sulfate alkanolammonium salts are known

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to be useful as emulsifier, and are particularly useful in microemulsion cosmetic composition.

Further, the optimization of a result effective parameter, e.g., particularly surfactant, or the amounts of each and every ingredients, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215.

11. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermann et al. (US 4,371,584, IDS) in view of Balzer (US 5,605,651) and Bergmann et al. (US 5,077,040).

12. Hermann et al. teaches a cosmetic cleansing composition for shower comprising fatty alcohol ether sulfate, or fatty alcohol sulfate; and polyalkanolamine, such as isopropanolamine or diisopropanolamine; an oil component, which may be triglycerides; a low alky alcohol, such as propylene glycol, and other well known cosmetic additives, including surfactant. See, particularly, column 1, line 35 bridging column 2, line 24, the examples in columns 3 and 4, and the claims.

13. Hermann et al. does not teach expressly a diluted form, i.e., with substantially amount of water, and in the form of microemulsion.

14. However, Balzer teaches that fatty alcohol ether sulfate alkanolammonium salt, or fatty alcohol sulfate alkanolammonium salt, are known to be an emulsifier, particularly, in cosmetic or pharmaceutical composition containing oil components. Bergmann et al. teaches that fatty alcohol ether sulfate alkanolammonium salt are known to be useful in cosmetic microemulsion compositions as surfactant. See, particularly, column 18, lines 34-60.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to dilute the composition of Hermann et al. with water and formulate the composition into micremulsion form accordingly.

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A person of ordinary skill in the art would have been motivated to dilute the composition of Lerg et al. with water and formulate the composition into micremulsion form because fatty alcohol ether sulfate alkanolammonium salts, or fatty alcohol sulfate alkanolammonium salts are known to be useful as emulsifier, and are particularly useful in microemulsion cosmetic composition. Further, the optimization of a result effective parameter, e.g., particularly surfactant, or the amounts of each and every ingredients, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner
SHENGJUN WANG
PATENT EXAMINER

Shengjun Wang

June 20, 2003